

MEMORANDUM OF AGREEMENT
REGARDING THE GUADALUPE RIVER FLOOD CONTROL PROJECT

WHEREAS, the U.S. Army Corps of Engineers, Sacramento District (Corps), has determined that the Guadalupe River Flood Control Project (Project) will have an effect upon the River Street Historic District, an historic property eligible for inclusion in the National Register of Historic Places, and has consulted with the California State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (Council) pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) and

WHEREAS, all of the Project Area of Potential Effect has been inventoried for cultural resources, and the resources evaluated for eligibility for inclusion in the National Register of Historic Places in consultation with the SHPO; and

WHEREAS, alternatives in project design to avoid affecting known historic properties have been examined by the Corps and found to be infeasible;

WHEREAS, public concerns have been solicited regarding both prehistoric archeological sites and structures of the built environment; and

WHEREAS, the Preservation Action Council of San Jose (PACSJ) has participated in the consultation and has been invited to concur in this Memorandum of Agreement;

NOW, THEREFORE, the Corps and the California SHPO, and the Council agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

Stipulations

The Corps will ensure that the following measures are carried out:

1. Prior to taking any action which could affect the River Street Historic District, an historic property, the Corps will consult with the Historic American Buildings Survey (HABS) Division of the National Park Service to determine what documentation shall be required. The Corps shall ensure that unless otherwise agreed to by HABS, all documentation is completed and accepted by HABS prior to any alteration or demolition, and that copies of this documentation are made available to the SHPO and appropriate local archives designated by the SHPO.

2. In consultation with the SHPO, the Council and PACSJ, an analysis to evaluate alternatives to the demolition of historic structures in the River Street Historic District will be undertaken by the Corps. This alternatives analysis, hereinafter called the analysis, will include but may not be limited to:

(a) A market study for identification and evaluation of alternatives to the demolition of the historic structures, including relocating buildings onto nearby vacant parcels to retain the integrity of the historic district, to include:

- (1) Study of similar districts and their uses;
- (2) Integration of the River Street Historic District with surrounding and downtown land uses;
- (3) Determination of viable and alternative uses of structures;
- (4) Identification of funding sources for renovation and operation; and
- (5) Projected revenues and financial benefits for the City of San Jose; and

(b) The development of a marketing plan to include:

- (1) An information package about the property, including but not limited to:
 - . photographs of the property;
 - . a parcel map;
 - . information on the property's historic significance;
 - . information on the property's cost;
 - . information on Federal tax benefits for rehabilitation of historic structures;
 - . notification that the purchaser will be required to rehabilitate or maintain the property in accordance with the recommended approaches in the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings U.S. Department of the Interior, National Park Service, 1983 and
 - . notification of any requirement for inclusion of a restrictive covenant in the transfer document.

- (2) A distribution list of potential purchasers or transferees.
- (3) An advertising plan and schedule.
- (4) A schedule for receiving and reviewing offers.

The analysis will also address the structural feasibility of relocating any of the historic structures scheduled for demolition, costs to physically move one or more structures, costs for seismic and other life safety retrofits, and identification of new owners and reuse for buildings after relocation. The analysis shall identify measures for removal that minimizes damage to the salvaged elements. If a structure can be relocated, the Corps will consult with the SHPO, the Council and PACSJ who will assist the Corps to develop the marketing plan. The costs for removal, salvage and relocation shall be borne by the Corps subject to the limitations of Public Law 93-291 (16 U.S.C.469). If additional funds are needed, the Corps will consult with the SHPO, the Council and PACSJ to determine if additional funding from public or private sources may be available.

3. The Corps will consult with the SHPO and PACSJ to identify any architectural elements from those buildings which will not be relocated and which could be salvaged for reuse in other historic buildings, incorporated in new construction, used in an interpretive display, or stored for future use.

4. The SHPO, the Council and PACSJ will be provided with the opportunity to review and comment upon scope of work for the analysis in accordance with Stipulation 10 in this-agreement.

5. The analysis shall be considered within the context of the recommended approaches in "Moving Historic Buildings" (John Obed Curtis, 1979, American Association for State and Local History) and the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings. The draft report resulting from the analysis will be submitted to the SHPO, the Council and PACSJ for review and comment pursuant to Stipulation 10.

6. Should it be determined that all or part of the River Street Historic District affected by the Guadalupe River Flood Control Project can be relocated or salvaged, the Corps will develop and implement appropriate measures for doing so in consultation with the SHPO, the Council, and PACSJ.

7. The Preservation Action Council of San Jose will:

(a) Be provided with an opportunity to review and comment upon the scope of work for the analysis, and

(b) Provide assistance in identifying uses and community resources for the analysis. To avoid delay in advertising for construction of Contract 3 of the Guadalupe River Flood Control Project, all efforts by PACSJ will be completed in a timely manner and in accordance with the schedules of the Corps. The PACSJ will review the scope of work and draft reports or other documents on or before 30 calendar days from receipt of each document in accordance with Stipulation 10.

8. In the event archeological resources are discovered during Project construction, work will cease in those areas until the Corps completes consultation with the SHPO regarding eligibility of the sites to the National Register of Historic Places. The Corps will provide the SHPO and the Council an opportunity to review and comment upon proposed treatment in accordance with Stipulation 9 of this Agreement. The Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716) will be utilized as a basis for any proposed treatment, including data recovery, and for establishing professional qualifications and reporting requirements. The costs for data recovery shall be borne by the Corps subject to the limitations of Public Law 93-291 (16 U.S.C.469).

9. In the event Native American remains are discovered during Project construction, the Corps will develop treatment of those remains in consultation with the SHPO, the Council and appropriate Native American descendants. Costs associated with this effort shall be borne by the Corps subject to the limitations of Public Law 93-291 (16 U.S.C.469).

10. The Corps will provide the SHPO, the Council, and PACSJ with the opportunity to review and comment on any plans, specifications, contracts, or other documents provided for review. These reviews may be concurrent. The failure of any party to comment within 30 days after receipt of such documents shall not prevent the Corps from implementing them. Should any party to this agreement object within thirty (30) days after receipt to any plans, specifications, contracts, or other documents provided for review pursuant to this agreement, or to the manner in which this agreement is being implemented, the Corps shall consult with the objecting party to resolve the objection. If the Corps determines that the objection cannot be resolved, the Corps shall forward all documentation relevant to the dispute to the Council. Within thirty (30) days after receipt of all pertinent documentation, the Council will either:

(1) Provide the Corps with recommendations, which the Corps will take into account in reaching a final decision regarding the dispute; or

(2) Notify the Corps that it will comment pursuant to 36 CFR 800.6(b) and proceed to comment. Any Council comment provided in response to such a request will be taken into account

by the Corps in accordance with 36 CFR 800.6(c)(2) with reference to the subject to the dispute.

11. If any of the signatories to this Agreement believes that the terms of the Agreement cannot be carried out, or that an amendment to the terms of the Agreement must be made, that signatory shall immediately notify the other signatories and request consultation to amend this Agreement. The process of amending the Agreement shall be the same as that exercised in creating the original Agreement.

Execution of this Memorandum of Agreement and implementation of its terms evidence that the Corps has afforded the Council an opportunity to comment on the Guadalupe River Flood Control Project and its effects on historic properties, and that the Corps has taken into account the effects of the undertaking on historic properties.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: Robert W. Beach Date: 6-18-92

U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT

By: Laurence R. Sadoff Date: 27 May 92
Laurence R. Sadoff
Colonel, Corps of Engineers
District Engineer

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

By: Heade R. Craig Date: 5-27-92
State Historic Preservation Officer

Concur:

PRESERVATION ACTION COUNCIL OF SAN JOSE

By: Barita M. Hummer Date: 5-31-92
President